

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 07- 04

AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE TIGARD DEVELOPMENT CODE MAKING SALES, SERVICE AND REPAIRS OF AUTOMOBILES, MOTORCYCLES AND OTHER LIGHT VEHICLES A NON-CONFORMING USE FOR THE 2.15 ACRES ON CASCADE BOULEVARD, SOUTH OF HIGHWAY 217(WCTM 1S135BA, TAX LOT 02800) AND ALLOW EXPANSION OF THE USE UNDER THE TIGARD DEVELOPMENT CODE IN PLACE AT THE TIME THE PROPERTY WAS ACQUIRED BY LANPHERE ENTERPRISES, INC. (MARCH 26, 1992) SUBJECT TO APPLYING FOR AND RECEIVING SITE DEVELOPMENT REVIEW APPROVAL (M372006-00003); TO THE EXTENT PERMITTED BY STATE LAW.

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 in 2004; and

WHEREAS, Ballot Measure 37 provides the responsible governing body to either pay compensation for reduced property value or waive the regulations where property is owned prior to the adoption of land use regulations; and

WHEREAS, a claim was made by Lanphere Enterprises, Inc. in the amount of \$1,404,810.00 as the net difference in the value of the property under the Tigard Development code in place on March 26, 1992 ; and

WHEREAS, Lanphere Enterprises, Inc. has owned the property since March 26, 1992 preceding the present zoning of Mixed Use Commercial (MUC) and the current development standards.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

- SECTION 1: The attached staff report (**Attachment 2**) and applicant's materials (**Attachment 3**) are hereby adopted as findings.
- SECTION 2: A waiver from the MUC zoning and current development code requirements is hereby granted to Lanphere Enterprises, Inc. to allow expansion of the use of motor vehicle sales, service and repair; to the extent permitted by state law. Lanphere Enterprises, Inc. can be allowed to apply for Site Development Review under the code and zoning in place on March 26, 1992. Zoning was then Industrial Park (I-P). Once the property is developed, it may continue to be used for vehicle sales, service and repair, even if there are changes in ownership or tenants. Once Lanphere Enterprises, Inc. ceases to be the owner, however, any expansion or major modification beyond development applied for during this ownership shall be subject to the land use regulations in effect at the time of application.
- SECTION 3: This waiver applies to 10380 SW Cascade Avenue; WCTM 1S135BA, Tax Lot 02800.
- SECTION 4: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED:

By Unanimous vote of all Council members present after being read by number and title only, this 27th day of March, 2007.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED:

By Tigard City Council this 27th day of March, 2007.

C. Dirksen
Craig Dirksen, Mayor

Approved as to form:

James V. Keenan
City Attorney

March 27, 2007
Date

Hearing Date: March 27, 2007

Time: 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



180 DAY CLAIM PROCESSING PERIOD = 5/28/2007

SECTION I. CLAIM SUMMARY

FILE NAME: LANPHERE ENTERPRISES, INC. COMPENSATION CLAIM
CITY CASE NO: Measure 37 Claim (M37) M372006-00003

CLAIMANT/ OWNER:	Lanphere Enterprises, Inc. 12520 SW Canyon Rd. Beaverton, OR 97005	CLAIMANT'S ATTORNEY:	Steve Morasch Schwabe, Williamson & Wyatt 700 Washington St., Suite 701 Vancouver, WA 98660
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CLAIM: The Claimant seeks a waiver of provisions of the Tigard Development Code making sales, service and repairs of automobiles, motorcycles and other light vehicles a non-conforming use for the subject parcel. Waiver is also requested of the regulations that prevent the claimant from expanding the existing use of the property. The Tigard Development Code allows expansions of lawfully pre-existing uses as long as the Washington Square Regional Center standards are substantially met or shows complete conformance. The amount claimed as compensation without such waiver is \$1,404,810.00.

**AFFECTED
REGULATION:** The Claimant seeks a waiver of land use regulations that restrict expansion of the existing use. The applicant's supporting materials refer generally to Code sections found in 18.520 – Commercial Zoning Districts, 18.630 – Washington Square Regional Center, and 18.765 – Off Street Parking & Loading Requirements. Reference is also made to any Comprehensive Plan or Development Code amendments pursuant to the Washington Square Regional Center Plan and any provisions that restrict expansion of the existing use. No specific code provisions are cited. Furthermore, the claimant provides no specific development plan. Because the compensation claimed is for loss of value resulting from restrictions on the existing use of vehicle sales, servicing and repair, staff has limited its review to expansion of that use.

**ZONING
DESIGNATION:** MUC; Mixed Use Commercial District. The MUC zoning district includes land around the Washington Square Mall and land immediately west of Highway 217. Primary uses permitted include office buildings, retail, and service uses. Also permitted are mixed-use developments and housing at densities of 50 units per acre. Larger buildings are encouraged in this area with parking under, behind or to the sides of buildings.

LOCATION: 10380 SW Cascade Avenue; WCTM 1S135BA, Tax Lot 02800.

**APPLICABLE
CODE CRITERIA:** Municipal Code Chapter 1.20.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the City Council review the following report and determine whether the claim is valid. Staff further recommends that City Council opt for a waiver of those standards dealing with the Washington Square Regional Center, expansion of existing uses, off-street parking minimum and maximums and commercial zoning districts.

SECTION III. BACKGROUND

The subject parcel is located on Cascade Avenue and south of Highway 217. It is currently developed with Beaverton Honda, which is a motorcycle/light equipment sales and repair business. In April 2000, through Ordinance 00-18, City Council amended the Tigard Comprehensive Plan and Development Code to include the Washington Square Regional Center (WSRC) Plan. Zoning of the subject property was changed from Industrial Park (I-P) to Mixed Use Commercial (MUC). In April 2002, the City adopted Ordinance (Ord. 02-12) that implemented the WSRC Plan. Up until this point, application of the plan had been optional. The provisions of this ordinance, as it relates to the subject of the claim (expansion of an existing use), were not in effect at the time the subject property was acquired by the claimant on March 26, 1992.

SECTION III. APPLICABLE CRITERIA AND FINDINGS

Section 1.20.030 states a property owner wishing to make a claim against the City under Measure 37 shall first submit a claim to the City. A claim under Measure 37 must be in writing and include:

A copy of all claim documents submitted by the claimant is attached as Attachment 3.

A. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

The claimant identifies the property as being located at 10380 SW Cascade Avenue; WCTM 1S135BA, Tax Lot 02800.

B. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.

The name and address of the entity making the claim is Lanphere Enterprises, Inc., 12520 Canyon Road, Beaverton, OR 97005. Lanphere's representative is Schwabe, Williamson and Wyatt, 700 Washington Street, Suite 701, Vancouver, WA 98660. The Claimant's representative states the property was acquired by the claimant on March 26, 1992 and submitted a warranty deed dated March 26, 1992 (#92019213 Washington County) as evidence. The Claimant's representative submitted a title report dated October 13, 2006 showing Lanphere Enterprises, Inc. as the current owner.

C. A list of all persons with an ownership interest in or a lien on the property.

The title report identifies the claimant as the sole owner.

D. Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.

In a letter to the City dated November 28, 2006, Steve Morasch of Schwabe, Williamson and Wyatt, the Claimant's attorney, states that the City has rezoned the property and adopted zoning ordinances and Comprehensive Plan provisions that restrict the use and reduce the value of the property. The Claimant's representative identified Tigard Development Code (TDC) Section 18.520.030 and Table 18.520.1 which states sales, service and repair of automobiles, motorcycles and other light vehicles are not permitted within the MUC zone. The applicant alleges that these changes make the existing use non-conforming and prohibits or restricts any expansion of the existing use because WSRC standards must be substantially or completely met.

E. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.

The Claimant's representative states that a waiver of the land use regulations that restrict expansion of the existing use is preferred. The Claimant's representative has submitted a list of these regulations but also states that the claim also applies to any Comprehensive Plan amendment or zoning code amendment adopted pursuant the Washington Square Regional Center Plan and to Comprehensive Plan provisions that restrict expansion of the existing use. The list includes TDC Section 18.520 – Commercial Zoning Districts, TDC Section 18.630 – Washington Square Regional Center and TDC Section 18.765.020 & 070 – Off Street Parking.

F. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.

The claimant claimed \$1,404,810.00 as compensation. Documentation supporting the amount was not submitted with this claim, but the Claimant's representative states that an appraisal can be provided.

G. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

The Claimant's representative is Steve Morasch with Schwabe, Williamson, and Wyatt, 700 Washington Street, Suite 701, Vancouver, WA, 98660 (360-694-7551).

Section 1.20.080 outlines the criteria for making a decision on the compensation claim. In deciding the claim, the Decision Maker may take any of the following actions:

Deny the claim based on any one or more of the following findings:

a. The regulation does not restrict the use of the private real property.

The existing use was permitted under the zoning (I-P) in place at the time of acquisition. Under the current zoning (MUC) the use is not permitted and therefore, becomes a non-conforming use. Because the property is located within the Washington Square Regional Center, expansions of non-conforming uses are permitted by TDC 18.630.030 – Pre-Existing Uses and Development within the Washington Square Regional Center Mixed Use Districts. Expansions up to 20% of the gross floor area are allowed provided the applicant demonstrates substantial compliance with all appropriate development standards of the WSRC code or if the purposes of the standards are addressed to the extent the expansion allows. Expansions that happen after using the 20% expansion shall conform to the development standards of the WSRC code. It is not known whether the applicant can meet the current WSRC standards without reviewing a development application. There is also a process (Design Evaluation Team – TDC 18.630.110) that provides for flexibility from the WSRC standards.

b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.

The fair market value of the property could be reduced because the new code requirements include street improvements, right-of-way dedications, and design requirements for the site and building. Without reviewing a land use application, knowing whether there is an actual reduction is problematic. It is, however, possible there is a reduction just as it is possible the development following the WSRC standards will positively impact the fair market value.

c. The claim was not timely filed.

The claim was filed on November 29, 2006 which was within the deadline to file a claim two years after the passage of Measure 37.

d. The Claimant is not the current property owner.

A copy of the title report and deeds was provided by the applicant. Both show Lanphere Enterprises, Inc. acquired the property on March 26, 1992 as the Claimant's representative has stated. Lanphere Enterprises, Inc. is the current owner.

e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.

In April 2000 the Tigard Comprehensive Plan, Development Code and zoning classifications were amended to include the Washington Square Regional Center. Application of the plan was optional until April 2002 when the plan was implemented. The Claimant was in possession of the property in 1992 and therefore, was owner at the time the challenged regulations were adopted.

f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

The Claimant's representative has focused on commercial use regulations and development standards that affect the existing use, which is now considered non-conforming. These standards are not related to nuisance law or law regulation pornography or nude dancing.

g. The regulation is required by federal law.

Design standards, off-street parking requirements and use regulations of the Tigard Development Code are not required by federal law.

h. The regulation protects public health and safety.

The Claimant's representative cites TDC standards and Comprehensive Plan policies related to Washington Square Regional Center, restrictions on the expansion of uses, and off-street parking minimums and maximums. None of these regulations are required to protect public health and safety.

i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

By adopting the Washington Square Regional Center standards, the City is implementing Metro's 2040 Growth Concept Plan. Still responsibility lies with the City.

j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

No detailed development plan or land use proposal has been reviewed or final action taken on to apply the challenged regulations. The City could deny the claim. The claimant then has the option of making application which then provides two years from the date of the decision to file a claim or to go directly to circuit court for a determination.

k. The City has not established a fund for payment of claims under Measure 37.

No such fund has been established at this time.

1. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through k. The basis for this finding must be clearly explained.

Staff finds no other reasons, aside from those already listed, to deny the claim.

2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.

The City Council will need to make a determination of whether funds may be appropriated to pay any valid claim. To pay an alternative monetary claim would require an appraisal of the impact of the regulations and there is no way to determine how that alternative would relate to this claim.

3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.

The City Council shall decide whether to pay the claim or waive the regulation. Staff recommends that should a waiver be granted, it shall run with the person, not the land, and shall be a specific exemption to those standards dealing with Washington Square Regional Center, expansion of existing uses, off-street parking minimum and maximums, and commercial zoning districts.

4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.

Waiving current regulations and allowing the applicant to apply under the standards in place at the time the property was acquired will eliminate the restrictions now on the properties use and value.

5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

No contributions for compensation have been identified at this time.

The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.

Staff recommends waiver of the current regulations affecting expansion of an existing non-conforming use, development within the Washington Square Regional Center, and minimum/maximum parking requirements. The claimant should file a development application and apply according to all regulations in place at the time the property was acquired (March 26, 1992).

A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

This report represents only a recommendation to the City Council and is not the final decision of the City.

SECTION IV. CONCLUSION

Staff finds that the code amendments related to Washington Square Regional Center could restrict the development of the parcel in question. Waiver of current regulations is suggested. The claimant can be allowed to apply under the code and zoning in place on March 26, 1992. The main differences being that the property was zoned Industrial Park (I-P) rather than Mixed Use Commercial (MUC), Vehicle Sales and Repairs were permitted uses in the zone and there were no site and building design standards specific to the Washington Square Regional Center. The Council should decide whether to pay compensation, waive applicable regulations, or deny the claim based on Measure 37, taking into account the code provisions listed above. An ordinance specifically waiving the existing code requirements to the standards in place on March 26, 1992 has been prepared for Council consideration.


PREPARED BY: Cheryl Caines
Assistant Planner

March 12, 2007
DATE

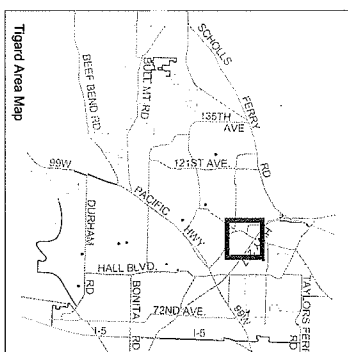

APPROVED BY: Dick Bewersdorff
Planning Manager

March 12, 2007
DATE

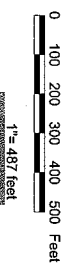
CITY of TIGARD
GEOGRAPHIC INFORMATION SYSTEM
VICINITY MAP

LANPHERE
ENTERPRISES
MEASURE 37 CLAIM

SUBJECT SITE



Tigard Area Map



1"= 487 feet



Information on this map is for general location only and should be verified with the Development Services Division.

13125 SW Hall Blvd
Tigard, OR 97223

<http://www.ci.tigard.or.us>

Plot date: Feb 2, 2007; C:\magic\MAGIC03.APR